THE IMMIGRATION CRISIS

SCOTT JONES: SACRAMENTO COUNTY (CA) SHERIFF

INTRODUCTION

The Sacramento County Sheriff's Department is one of the largest Sheriff's Departments in America. We have over 1300 full-time deputy sheriffs, and a constituency of over 1.4 million persons, covering 1,000 square miles. Unlike most counties, the largest population center in Sacramento County is in its unincorporated portion, with a population of almost 600,000 ranging from rural and suburban, to densely populated urban areas. We operate two large jails, with an average daily population (ADP) of about 4,500 inmates. Since one of our jails is next door to a federal courthouse, we house federal and ICE inmates under contract.

I have worked my entire adult career in the Sheriff's Department, starting in corrections in 1989, and elected Sheriff in 2010. I have a bachelor's degree in criminal justice, and a juris doctor (law) degree. I have been a member of the California State Bar since 1998. During my entire career, both historically and currently, we have enjoyed a particularly positive relationship with our federal partners, including legacy INS and ICE.

OUR POPULATION:

Sacramento is extremely diverse demographically, with a large population of undocumented immigrants. Additionally, California is home to an estimated 24% of ALL undocumented immigrants. The vast majority are law abiding and hard working men, women and families who want nothing more than to live the American Dream. I want that for them also. Further, our State and National economies are dependent on this population in many respects. That being said, there is a segment in every population—including the undocumented population—that will choose crime, drugs, violence, and gangs as a way of life. Worse yet, in many instances they victimize other undocumented persons because they know that their victims are often too afraid to call police for help because of their uncertain and ever-changing place in our communities.

I and most other public safety leaders in California have no interest in enforcing immigration law. Our focus is keeping communities safe and ensuring that the entire community (including our undocumented population) is protected and willing to call us if they need help. Of course, that presupposes that there are people or entities that ARE

concerned with enforcing immigration law. That ARE interested in protecting our communities from dangerous undocumented immigrants. That ARE adequately identifying them, detaining them when necessary, and removing criminals that the rest of my community needs to be protected from. None of that is happening to any satisfactory degree.

THE PROBLEM: WHY DETAINERS, THE PRIORITY ENFORCEMENT PROGRAM, AND SANCTUARY CITIES ARE FAILING

The problem with the current immigration policy can fundamentally be simply stated as there is NO coherent, sustainable immigration policy. Worse than that, there is *anti-policy* (an unwillingness to support even current promulgated policy and law, or challenge contrary policies), and each State has their own policies and laws on immigration.

The 'Priority Enforcement Program' (PEP)

Secure Communities, until it was repealed with the November 20, 2014 Executive Memo, was designed to identify each undocumented person prior to their release from custody, by allowing ICE to serve detainers on local jails to hold those who were arrested for new crimes in custody for "no more than 48 hours," if there was reason to believe they were in the country illegally. This resulted in identifying and removing many criminals that had extensive criminal and violent histories. Presumably, the current administration felt that this cast too broad a net and repealed Secure Communities in favor of the Priority Enforcement Program (PEP), or "Secure Communities *lite".* Under PEP, only the top priority undocumented persons are targeted for removal. Unfortunately, prior removal, multiple felony arrests, youths with extensive gang activity, misdemeanor convictions, and many felony convictions (as long as they aren't 'aggravated felonies') won't get you in the first priority. This coupled with many states' rush to reduce felonies to misdemeanors[1] means that many undocumented criminals do not even rise to the level of concern or care for the federal government and its law enforcement agencies. Further, even those in the first priority that are targeted for removal are often released pending their court proceedings, and escape their fate altogether.

[1] E.g. California's Proposition 47 which reduced many felonies to misdemeanors, including commercial burglary, theft of most guns, most identify theft, "purse snatching", shoplifting regardless of number of priors, etc.

But even those offenders in the first priority are escaping consequence.

Detainers: Mandatory vs. "Mere Requests"

The success of either Secure Communities or the watered down Priority Enforcement Program is absolutely dependent upon ICE being able to adequately identify each undocumented person who is arrested to determine which priority they fall under. It is crucial to remember that ICE does not allow local law enforcement access to their database(s), so we know neither someone's criminal history if under an alias, nor their immigration offenses or status. We are completely dependent on ICE for this information and enforcement. As such, both programs have local jails submitting fingerprints to ICE, which in turn gives their local agents definitive information on which they can act. In the past, they relied on ICE detainers when necessary to have the local jails hold the undocumented arrestee for "no more than 48 hours" so ICE could determine with accuracy who the arrestee is and whether further action would be appropriate. The detainers were served for those inmates held on local charges that ICE had already determined were worthy of further action by ICE. Until this administration, the "shall" language in the statute was interpreted and enforced by the federal government as mandatory.

However, many states more recently asserted that the mandatory language of detainer law is merely a "request" and not a legal demand. Although several years ago the federal government asserted this law was mandatory, the federal government has continued its historic capitulation on immigration issues. During the last couple years, the federal government refused to take a position on whether detainers are mandatory or suggestive even when directly asked by law enforcement, and recently have capitulated to advocacy groups that the detainer is merely a request. Thus, arrestees are not being kept in custody long enough to determine their proper identity and whether they qualify for removal or further action by ICE. While their newer "Request for Notification" may be effective for many *sentenced* inmates with a certain release date, those that are arrested on fresh charges who get citation releases, who are released on their own recognizance, who bail out, or who get released from court are NOT subject to such requests for notification because they are getting out too quickly and without enough advance notice to ICE to respond to the jails and assume custody of these offenders. According to ICE officials, in-custody arrests are down 95% from just a year ago. That means that the overwhelming majority of undocumented persons who are arrested on local charges—no matter how severe—are released right back into

the community without any review or action by ICE, *regardless of which 'priority' they fall under*. Once back in the community, ICE can either choose to utilize precious resources to go find them again, or simply allow the cycle to continue.

ICE has said they've rolled out a new "request for notification" that should help. It will not. It does nothing more or further to ensure offenders are kept long enough for ICE officers to respond to the jails and assume custody. It is merely a codification of the existing policy change that they will not treat the detainers as mandatory.

A Word About Sanctuary Cities

Because of the above failure of PEP and the detainer system, it is very difficult to cooperate with ICE in keeping known and dangerous offenders off the street. There IS cooperation that goes on, however, in terms of notification prior to release when feasible. Cooperation at the line level is and remains excellent despite the policy roadblocks that are continually put up. Our goals *at the line level* remain the same—to keep our communities safe.

It is important to note that many cities and even states—such as California—even without the designation are de facto sanctuary jurisdictions. More on that a little later, but for those jurisdictions such as San Francisco that put a greater value on their undocumented population than the safety of their American one, the consequences on public safety can be far more dire. In most of these jurisdictions there is NO cooperation or communication with ICE officers, so the dangerous outcomes detailed above are even more exacerbated. Although ALL jurisdictions have to walk a fine line between state law and federal law on immigration, these jurisdictions flagrantly enact ordinance and law that is overtly contrary to federal law. The federal government should not permit this because it is putting communities at grave risk—not to mention that the only entity legally entitled to pass immigration laws is the federal government. Yet the federal government continues to capitulate their plenary authority—AND THEIR RESPONSIBILITY—to enforce existing laws or create policy applications to keep communities safe.

WHO IS MAKING POLICY IF NOT THE FEDERAL GOVERNMENT?

State Action Challenges

As mentioned previously, the federal government—specifically the Executive Branch—deliberately chooses not to challenge any erosion of the immigration framework. As a result, there are 50 different immigration laws in effect in this country. Fundamentally, the states have no authority to promulgate immigration law; it is a plenary function of the United States government under the Constitution. The Supremacy Clause ensures that jurisdiction for wholly federal questions resides squarely and exclusively with the federal government. Yet, the federal government challenges none, and simply allows the States to issue new and ever-changing edicts. This lack of challenge by the federal government not only fosters 50 different immigration laws, but also emboldens States and organizations like the ACLU—who virtually believe nobody should be incarcerated OR deported—to craft policy and use the courts to establish new restrictions, confident that they will get no challenge from the federal government.

Court Challenges

The ACLU continues to sue local jails, municipalities, and law enforcement agencies all over the country on a variety of immigration-related issues. They are currently suing us over immigration issues. A case of note from a lower court out of little Clackamas County, Oregon invalidated detainers as amounting to a detention without probable cause. This case is not mandatory law on any other jurisdiction than Clackamas County, yet it had every other Sheriff (because they run corrections) in the country watching what the federal government would do to challenge that decision; to defend the supremacy of the federal government; to intervene; or simply stand up and say 'we don't agree with that decision'. The response was nothing. They by deliberate decision did not challenge that court decision. When there is a power vacuum, someone will step in and that person was the ACLU. They sent a letter to every sheriff threatening to sue them if they honored <u>any</u> ICE detainers, not just the ones that the erosive state laws still allowed. This had the effect of causing every other Sheriff in the country to look to their federal partners in the East and implore them—beg them—to stand with them to enforce federal law. Since we care about public safety and the policy-makers care about votes, it was made very clear that there would be no challenge during this administration, and many sheriffs had to make a painful decision NOT to cooperate with ICE and detainers in any way. As a result, I and most other California sheriffs now do not honor ANY ICE detainers for any reason, because ICE is not allowed to stand with us against any challenge. The result is that almost all undocumented persons that are

arrested are released without any scrutiny from ICE at all. Thus, the ACLU has affected national immigration policy with one successful court decision in Oregon, and will continue to do so as long as they are able to find jurists willing to engage in judicial activism to effectively change the law, without fear of federal challenge.

Immigration law, and necessarily the safety of this country, is eroding at an unprecedented rate and the federal government is a spectator at best, and a willing participant at worst.

HOW TO FIX THE PROBLEMS

Of course singularly reforming immigration at the federal level remains the best option but even while we wait for that, the immediate problems CAN be fixed. Here's how:

- Make Detainers mandatory on local jails
- Challenge court decisions and state laws that are contrary to public safety and contrary to existing federal immigration law
- Do not allow Sanctuary Cities to enact substantive laws that are contrary to federal law
- Allow ICE to carry out its mission unencumbered by politics
- Have ICE share its resources and databases with local law enforcement jurisdictions
- Provide support, legal protection or immunity for local jurisdictions willing to enforce immigration law
- Require the DMV of states that issue undocumented drivers licenses to share their information and biometrics with ICE for cross referencing and *proper* identification

I remain deeply committed to assisting in this national effort in whatever way I possibly can. Thank you for your time.